

FILED
**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF MASSACHUSETTS**

2004 MAY 21 P 1:07

LOWELL RETAIL DEVELOPMENT,
 LLC

Plaintiff,

v.

EXXON MOBIL OIL CORPORATION,

Defendant.

U.S. DISTRICT COURT
 DISTRICT OF MASSACHUSETTS
 Case No.

RECEIPT # _____
 AMOUNT \$ 150
 SUMMONS ISSUED W/A
 LOCAL RULE 4.1 _____
 WAIVER FORM _____
 MCF ISSUED _____
 BY DPTY. CLK. M
 DATE 5-21-04

04-cv-11028 EFH
 MAGISTRATE JUDGE Collings

NOTICE OF REMOVAL

Defendant ExxonMobil Oil Corporation (hereinafter "ExxonMobil") files this Notice of Removal of the civil action filed against it by plaintiff Lowell Retail Development, LLC (hereinafter "Lowell") to the United States District Court for the District of Massachusetts, pursuant to the provisions of 28 U.S.C. §§ 1441, 1446, and 1332, on the basis of the following facts that show this case is properly removable:

1. Plaintiff filed a complaint against defendant in Middlesex County Superior Court on January 30, 2004. The case is styled *Lowell Retail Development, LLC v. Exxon Mobil Oil Corporation*, Middlesex (Massachusetts) Superior Court, Civil Action No. 04-00369-L2. (Copies of the Complaint, Civil Action Cover Sheet, and Summons are attached hereto as Exhibit A.)
2. On April 22, 2004, the Complaint was served upon ExxonMobil.
3. The time within which defendant is required by the laws of the United States, 28 U.S.C. § 1446(b), to file this Notice of Removal has not yet expired.

4. Plaintiff is a Limited Liability Corporation formed under the laws of the State of Louisiana. (A copy of a page from the Louisiana Secretary of State's database is attached hereto as Exhibit B.)

5. Lowell Retail Development, LLC has a business address in Massachusetts.¹ (See Complaint, Ex. A hereto).

6. ExxonMobil is incorporated under the laws of the State of New York, and its principal place of business is in Houston, Texas.

7. This action is a civil action which may be removed to this Court by defendant pursuant to the provisions of 28 U.S.C. § 1441 in that it is a civil action between citizens of different states with an amount in controversy exceeding \$75,000 exclusive of interest and costs. Specifically, the plaintiff seeks declaratory relief and response costs and damages as a result of defendant's alleged contamination of plaintiff's property due to releases and/or threat of releases of gasoline in an amount in excess of one million dollars (\$1,000,000).

¹ ExxonMobil notes that Lowell registered with the Massachusetts Secretary of the Commonwealth as a foreign LLC, indicating in its registration that its principal place of business is in Houston, Texas. (Copies of the summary information pages regarding plaintiff from the Secretary of the Commonwealth's database and plaintiff's Annual Reports filed for the years 2002 and 2003 are attached hereto as Exhibit C.) However, it is ExxonMobil's understanding that all of Lowell's business is conducted in Massachusetts concerning the property at issue in this proceeding. Moreover, despite a requirement in Texas that a foreign company register with the Secretary of State if the company transacts business in Texas, ExxonMobil unable to locate any registration by Lowell with the Texas Secretary of State. (A copy of a page from the Texas Secretary of State's website, indicating that its database contains no information on Lowell, is attached hereto as Exhibit D). Furthermore, Lowell is not listed in the Houston, Texas telephone book and the Louisiana Secretary of State, where Lowell registered its LLC, does not have a Texas address for Lowell. (See Exhibit B). Accordingly, it appears that under applicable law, for purposes of establishing diversity, Lowell's principal place of business is not, in fact, in Texas. Therefore, removal based on diversity of citizenship is appropriate.

8. Venue is proper pursuant to 28 U.S.C. § 1442(a), because this court is the United States District Court for the district and division embracing the place wherein the state court action is pending.

9. Pursuant to 28 U.S.C. §1446(d), a copy of this Notice of Removal is being filed with the Civil Division of the Middlesex County Superior Court.

10. Pursuant to Local Rule 81.1(a), certified or attested copies of all records, proceedings and docket entries in the Middlesex Superior Court action shall be filed with this Court within thirty (30) days.

EXXONMOBIL OIL CORPORATION

By its attorneys,


Deborah E. Barnard (BBO# 550654)
Tara J. Myslinski (BBO # 644936)
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10 St. James Avenue
Boston, MA 02116
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Dated: May 21, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by U.S. Mail to David Y. Li, Esq., Posternak Blankstein & Lund LLP, Prudential Tower, 800 Boylston Street, Boston, MA 02199, this 21st day of May, 2004.


Tara J. Myslinski

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